

Date: February 3, 2015
To: Thomas J. Bonfield, City Manager
Through: Wanda S. Page, Deputy City Manager
From: Deborah Giles, Director, Department of Equal Opportunity/Equity Assurance
Subject: Durham City-County Disparity Study

Executive Summary

In 2013, the City of Durham and Durham County governments jointly contracted with Griffin & Strong, P.C. (GSPC), a law firm from Atlanta, Georgia, to conduct a comprehensive Disparity Study to examine and analyze the procurement policies and practices of both the City and the County and their prime contractors. GSPC sought to ascertain the participation and utilization of Minority and Women owned businesses that are eligible to provide goods and services to either entity or both.

GSPC completed their findings in December, 2014 and an administrative briefing of the findings was held on January 26, 2015. A presentation and a detailed report have been developed summarizing the outcome of the analysis of City and County contracting activity for a five-year period from FY2007-12.

Recommendation

1. The Department of Equal Opportunity/Equity Assurance recommends that the City Council receive a detailed report with a presentation of the Disparity Study, and
2. Refer the item to the administration for implementation of study recommendations.

Background

The City of Durham conducted a Disparity Study in 2000 to determine the constitutionality of its race and gender based MWBE program. In 2002, the City contracted with a firm to evaluate that study and make recommendations that would meet any applicable constitutional mandates appropriate to the City of Durham. The City adopted a race and gender neutral "Equal Business Opportunity Program (EBOP)" in 2003. This program has been reauthorized every two years since initial implementation without further study and will now sunset in March of 2016. As a best practice, it is recommended that programs that seek to remedy discrimination in contracting activity be studied every three to five years.

During the FY2012-13 budget process, the City and County governments discussed the prospects of doing a joint Disparity Study as a way for both entities to update their programs, provide a strong legal basis for providing contracting opportunities to small disadvantaged business enterprises in the event of a legal challenge and share in the costs associated with doing a new study.

The City Council approved entering into the Disparity Study agreement on March 18, 2013 and the Durham City and County Managers signed the agreement. Based on the selection process by City and County staff, Griffin & Strong, PC of Atlanta, Georgia was selected to conduct the study. The goal of the study was to determine whether there exists a statistically significant

disparity between the number of available MWBEs in the Durham marketplace and the number of these firms that have been awarded contracts from the City, the County or their prime contractors. The study also sought to determine if there was a legal predicate to maintain or create any remedial programs to address any disparity that might exist based on analysis of City and County contracting activity for a five-year period from FY2007-12.

GSPC completed their findings in December, 2014 and an administrative briefing of the findings was held on January 26, 2015. A presentation and a detailed report have been developed summarizing the outcome of the analysis and the firm has made recommendations that may make the City's programmatic efforts to remediate existing disparities more robust.

Issues and Analysis

There were eleven specific findings in the Disparity Study. Overall, the study points to a statistically significant underutilization of all minorities and women as prime and subcontractors in all procurement categories, inclusive of construction, architecture/engineering, services and goods. The findings mirror some concerns expressed by the administration and City Council based on the Equal Opportunity Equity Assurance Department's ongoing monitoring and reporting of construction and architecture/engineering contracting activity. The majority of City certified minority and women owned businesses are certified in construction and architecture/engineering.

It is noted that in the study of prime contracting, there was a focus on contracts greater than \$30,000. Therefore, contracting with minority/women primes under the \$30,000 threshold is not reflected in the study. Additionally, contracting with minority/women firms whose businesses were located outside of the relevant market identified in the study was not included.

It was noted that African Americans and women, which are the focus of the City's Equal Business Opportunity Program, are over-utilized as subcontractors in certain areas. This speaks to the effectiveness of the City's current program in these areas. However, these same two groups are substantially underutilized as primes. The study further reported almost no utilization of other minority groups either as primes or subcontractors. The study demonstrates that without the establishment of remedial programs at the City, there would be little utilization of minority and women owned businesses in City of Durham contracting.

In general, there seems to be a good understanding of the practices and procedures currently in place with the City. The purchasing practices and policies regarding minorities and women for the City are assisting in contracting with some Black American and White Female owned businesses but are not robust enough to close the disparity gap for any minority/women group.

GSPC has presented seventeen recommendations to enhance the City's current program. An implementation process will include the following:

February-April, 2015-The City Manager, EOEA Director and City Attorney with other key stakeholders as appropriate will conduct a thorough review of the Disparity Study analysis and each recommendation as well as any other best practices that may compliment the desired program outcomes.

April-July, 2015- Develop a report outlining the review and response to study recommendations with a presentation to City Council.

July-September, 2015-Develop implementation strategy including revisions to the EBOP ordinance as appropriate.

September, 2015-Present implementation strategy and any ordinance revisions to City Council.

Alternatives

The City may choose to continue current Equal Business Opportunity Program without change.

Financial Impact

There is no financial impact at this time.

SDBE

Because this is a report and presentation, it was not reviewed by the Department of Equal Opportunity Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.